Christina L. Geraci (SBN 236729)
Anthony F. Geraci (SBN 238892)
Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, CA 92614
Tel.: (949) 260-9156
Fax: (949) 260-9157
E-mail: christina@geracilawfirm.com

Attorneys for Defendant, BEVERLEE WILKES and RICK WILKES

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT COURT OF CALIFORNIA

LOWELL LABERTEW, an individual; and SANDRA LABERTEW, an individual, Plaintiff, v. C&R FINANCIAL, INC., an entity of unknown form; GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, a California Corporation; RAYMOND JACOB ROSZKOWICZ, an individual; RICK WILKES, an individual; BEVERLEE WILKES, an individual; and DOES 1-10, inclusive, Defendants,	Case No. 07cv2092W (LSP) Action Date: Trail Date: None Set **CROSS-COMPLAINT FOR:** 1. **FRAUD AND DECEIT** 2. **INTENTIONAL MISREPRESENTATION** 3. **FRAUDULENT INDUCEMENT TO CONTRACT** 4. **BREACH OF FIDUCIARY DUTY** 5. **IMPLIED INDEMNITY** 6. **EQUITABLE INDEMNITY** 7. **CONTRIBUTION** 8. **NEGLIGENCE** 9. **DECLARATORY RELIEF**
RICK WILKES, an individual; and BEVERLEE WILKES, an individual, Cross-Complainant, v. C&R FINANCIAL, INC., an entity of unknown form; GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, a California Corporation; RAY ROSZKOWICZ, an individual; LOWELL LABERTEW, an individual; SANDRA LABERTEW, an individual; and ROES 1-50, inclusive, Cross-Defendants.	

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

COMES NOW, Defendant/Cross-Complainants RICK WILKES, an individual, and BEVERLEE WILKES, an individual (hereinafter collectively referred to as the "WILKES" or "CROSS-COMPLAINANTS") and alleges as follows:

GENERAL ALLEGATIONS

1. At all times mentioned herein, RICK WILKES is an individual, residing in the State of Oregon, and doing business in the County of San Diego, State of California.

2. At all times mentioned herein, BEVERLEE WILKES is an individual, residing in the State of Oregon, and doing business in the County of San Diego, State of California.

3. The WILKES are informed and based upon information and belief alleges, that at all times mentioned herein, Defendant/Cross-Defendant GOLDEN EMPIRE MORTGAGE, INC. (hereinafter referred to as "GOLDEN") was and is a California Corporation, doing business in the County of San Diego, State of California. Furthermore, the WILKES are informed and based upon information and belief alleges, that at all relevant times mentioned herein, GOLDEN was doing business under the name CIB FUNDING (hereinafter referred to as "CIB"), in the County of San Diego, State of California.

4. At all times mentioned herein, Defendant/Cross-Defendant C&R FINANCIAL, INC. (hereinafter referred to as "C&R") is an entity of unknown form, but believed to be doing business in the County of San Diego, State of California.

5. The WILKES are informed and based upon information and belief alleges, that at all times mentioned herein, Defendant/Cross-Defendant RAYMOND JACOB ROSZKOWICZ (hereinafter referred to as "ROSZKOWICZ"), an individual, was and is employed by GOLDEN, CIB, and C&R, doing business in the County of San Diego, State of California.

6. The WILKES are informed and based upon information and belief alleges, that at all times mentioned herein, Plaintiff/Cross-Defendant LOWELL LABERTEW was and is an individual residing in the County of San Diego, State of California.

7. The WILKES are informed and based upon information and belief alleges, that at all times mentioned herein, Plaintiff/Cross-Defendant SANDRA LABERTEW was and is an individual residing in the County of San Diego, State of California. (LOWELL LABERTEW and

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

SANDRA LABERTEW hereinafter collectively referred to as the "LABERTEW" or "PLAINTIFF.")

8. The true names and capacities, whether individual, corporate, associate or otherwise, of Cross-Defendants ROES 1 through 50 inclusive are unknown to the WILKES at this time, and the WILKES therefore sues said Cross-Defendants by such fictitious names. The WILKES are informed and believe and thereon alleges that each of the Cross-Defendants designated herein as a ROE Cross-Defendant is tortiously, contractually, or otherwise responsible in some manner for the events and happenings alleged herein and that each did proximately cause thereby the following damages to the WILKES. The WILKES will amend this Cross-Complaint to allege the true names and capacities when they are ascertained.

9. Each of the Cross-Defendants named in the caption of this Cross-Complaint are and were the agents, servants and employees of each of the remaining Cross-Defendants named herein and, in doing the things alleged herein, were acting within the course and scope of said agency, service and employment with consent and permission of their employer and principal.

10. All of the acts, events and contractual undertaking alleged herein occurred within the County of San Diego, State of California, and within the jurisdiction of the above-entitled court. Further, the damages which the WILKES incurred as alleged below are within the jurisdiction of the District Court.

FACTUAL HISTORY

11. The WILKES, a retired married couple, were introduced to ROSZKOWICZ by his then wife (now ex-wife) at a dinner party in approximately 2003; at that time the WILKES were residing in California. At the introduction, ROSZKOWICZ orally held himself out to be a mortgage broker who dealt in high interest short term loans and stated that if the WILKES needed a mortgage broker or consultant, they could contact him; at that time he took down the WILKES telephone number and gave them his.

12. In approximately mid 2003, several weeks after the initial introduction at the dinner party, ROSZKOWICZ contacted the WILKES with, what he referred to as, a "great money making deal," that entailed a short term loan on a piece of undeveloped land. During this

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

telephone conversation, ROSZKOWICZ told the WILKES that they could make good money by funding high interest short term loans to ROSZKOWICZ's borrowers. He explained that he specialized in finding short term high interest loans for investors and paring them with his borrowers.

13. Several days after the telephone call from ROSZKOWICZ, the WILKES met ROSZKOWICZ at his office in Temecula, California where he presented them with a set of loan documents to sign concerning the short term loan on the undeveloped land. ROSZKOWICZ prepared all paperwork, explained it to the WILKES, and had them sign several documents. Within one year after signing the documents for the undeveloped land deal, the loan was fully paid off by the borrower and closed.

14. The WILKES did not hear from ROSZKOWICZ again until late 2006, where he again called them and stated he had another 'great money making deal" - at this time the WILKES were residing in Oregon. On or about October 30, 2006, ROSZKOWICZ telephoned and emailed the WILKES information to see if they would like to fund a loan for Mr. and Mrs. LABERTEW. ROSZKOWICZ explained that the loan was for a very nice couple that had been in their house for 40 years, but had run into some financial trouble due to Mr. LABERTEW's health. Mr. LABERTEW had regained his health and had a full time job, but needed a loan to carry him over until he could sell his home. The purchase contract was signed but the LABERTEWs were concerned that the first would foreclose before the transaction could take place (signed Offer to Purchase herein attached as Exhibit 1). ROSZKOWICZ stressed to the WILKES that loan would allow Mr. LABERTEW to keep his home from foreclosure and his truck from repossession.

15. The WILKES accepted ROSZKOWICZ's proposal based on ROSZKOWICZ representation that he was a licensed mortgage broker and knew what he was doing as they had had 1 prior dealing with him in the past. In early November 2006, ROSZKOWICZ faxed from California to the WILKES in Oregon all the loan documents. ROSZKOWICZ indicated on the documents where the WILKES needed to sign and date. The WILKES signed the documents and sent them back to ROSZKOWICZ. ROSZKOWICZ said he would execute the loan documents and send the WILKES a copy of the executed agreement. The WILKES reasonably believed and

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

relied upon ROSZKOWICZ's representation that he was a licensed mortgage broker and knew what he was doing.

16. After several months, the WILKES still had not received the executed loan documents as promised by ROSZKOWICZ. The WILKES placed several telephone calls and emails to ROSZKOWICZ requesting copies of the executed loan documents. ROSZKOWICZ on several occasions orally represented to the WILKES that he had mailed the documents to them; however, the WILKES never received the documents.

17. The LABERTEWs were to make their first payment on the loan April 1, 2007, but failed to make it. On April 24, 2007, the WILKES sent the LABERTEW's a certified letter informing them their payment was past due approaching the 30-day mark. Through various emails, Mr. LABERTEW assured the WILKES that he had refinanced the house and they would be provided with a payoff. To date, **no payment** has been made by the LABERTEW's on the loan; the WILKES have born the entire cost on their own.

18. The WILKES fully funded the entire loan amount, including the commission amount paid to ROSZKOWICZ for brokering the loan, and never received one cent in return.

19. In mid August 2007, the WILKES received a letter sent on behalf of the LABERTEWs' by attorney Deborah L. Raymond claiming to rescind the loan. The WILKES were contacted via telephone by Ms. Raymond who apparently was yelling and screaming at them that they had violated several statues and had to rescind and revoke any interest the WILKES had in the LABERTEW's property.

20. After speaking with Ms. Raymond, the WILKES immediately contacted ROSZKOWICZ regarding the LABERTEW's attempt to rescind the loan. ROSZKOWICZ informed the WILKES that C&R's attorney had reviewed the loan documents and assured ROSZKOWICZ that the loan was executed properly and within the confounds of the law. ROSZKOWICZ said his attorney prepared a letter for WILKES to send to Ms. Raymond and the LABERTEWs; essentially the attorney had ghost written a letter for the WILKES to send in response to the Notice of Rescission (herein attached as Exhibit 2).

21. During this same conversation, the WILKES demanded ROSZKOWICZ provide

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

them with a copy of the executed loan documents. ROSZKOWICZ said he would send them right away; the WILKES finally received, from ROSZKOWICZ, copies of the loan documents in September 2007 – almost a full year after the execution of the loan.

22. Upon being served with the Plaintiff's Complaint, the WILKES promptly hired their own separate counsel, who reviewed all documents, and provided Plaintiffs with an ACCEPTANCE OF RESCISSION ON NOVEMBER 7, 2007 (herein attached as Exhibit 3). On November 12, 2007, Plaintiff's were provided with a follow-up letter and a detailed rescission breakdown the WILKES expected Plaintiff's to tender to the WILKES in response to the loan rescission (herein attached as Exhibit 3). To date no response to the WILKES requested tender, or numerous requests for Plaintiff's tender, has been provided.

23. During the course of discovery, the WILKES determined that ROSZKOWICZ is not in fact a licensed mortgage broker, but merely a real estate sales agent.

24. At all times mentioned herein, ROSZKOWICZ knew that he was not in fact a licensed mortgage broker. ROSZKOWICZ knowingly misrepresented, concealed, and failed to disclose this fact to the WILKES. Therefore, ROSZKOWICZ was not qualified to perform, as he did in this case, as a mortgage broker, offering the WILKES advice, and setting up short term loans. GOLDEN, CIB, and C&R as ROSZKOWICZ's employers knew or should have known what that their employee was engaging in acts that only a licensed mortgage broker could perform.

25. ROSZKOWICZ intended to induce reliance on the part of the WILKES in entering into the loan agreement with Plaintiff's based on the false representation that ROSZKOWICZ was a licensed mortgage broker.

26. The WILKES did justifiably and reasonably rely on ROSZKOWICZ's representation that it was a licensed mortgage broker. Had the WILKES known that ROSZKOWICZ was not in fact so licensed, the WILKES would not have entered into said loan agreement with Plaintiffs.

27. As a result of ROSZKOWICZ's misrepresentation the WILKES's have incurred damages of sums paid under the loan to Plaintiffs', and fees and costs of defending themselves in this lawsuit in an amount in excess of $100,000.

28. The aforementioned conduct of ROSZKOWICZ, GOLDEN, CIB and C&R were oppressive, fraudulent, despicable and malicious. The aforementioned acts of ROSZKOWICZ, GOLDEN, CIB and C&R were committed with the wanton and willful disregard of the rights of the WILKES in an effort to deceive the WILKES. Therefore, the WILKES are entitled to an award of exemplary and punitive damages according to proof.

FIRST CAUSE OF ACTION

(Fraud and Deceit)

(Against C&R FINANCIAL, INC., GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, RAY ROSZKOWICZ, and ROES 1 to 50, inclusive.)

29. The WILKES reallege each and every allegation set forth in paragraphs 1 through 28 above, and incorporates them by reference as though fully set forth herein.

30. At all times mentioned herein, ROSZKOWICZ knew that he was not in fact a licensed mortgage broker. ROSZKOWICZ knowingly misrepresented, concealed, and failed to disclose this fact to the WILKES. Therefore, ROSZKOWICZ was not qualified to perform, as he did in this case, as a mortgage broker, offering the WILKES advice, and setting up short term loans. GOLDEN, CIB, and C&R as ROSZKOWICZ's employers knew or should have known what that their employee was engaging in acts that only a licensed mortgage broker could perform.

31. ROSZKOWICZ intended to induce reliance on the part of the WILKES in entering into the loan agreement with Plaintiff's based on the false representation that ROSZKOWICZ was a licensed mortgage broker.

32. The WILKES did justifiably and reasonably rely on ROSZKOWICZ's representation that it was a licensed mortgage broker. Had the WILKES known that ROSZKOWICZ was not in fact so licensed, the WILKES would not have entered into said loan agreement with Plaintiffs.

33. As a result of ROSZKOWICZ's misrepresentation the WILKES's have incurred damages of sums paid under the loan to Plaintiffs', and fees and costs of defending themselves in this lawsuit in an amount in excess of $100,000.

34. The aforementioned conduct of ROSZKOWICZ, GOLDEN, CIB and C&R were

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

oppressive, fraudulent, despicable and malicious. The aforementioned acts of ROSZKOWICZ, GOLDEN, CIB and C&R were committed with the wanton and willful disregard of the rights of the WILKES in an effort to deceive the WILKES. Therefore, the WILKES are entitled to an award of exemplary and punitive damages according to proof.

SECOND CAUSE OF ACTION

(Intentional Misrepresentation)

(Against C&R FINANCIAL, INC., GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, RAY ROSZKOWICZ, and ROES 1 to 50, inclusive.)

35. The WILKES reallege each and every allegation set forth in paragraphs 1 through 34 above, and incorporates them by reference as though fully set forth herein.

36. At all times mentioned herein, ROSZKOWICZ knew that he was not in fact a licensed mortgage broker. ROSZKOWICZ knowingly misrepresented, concealed, and failed to disclose this fact to the WILKES. Therefore, ROSZKOWICZ was not qualified to perform, as he did in this case, as a mortgage broker, offering the WILKES advice, and setting up short term loans. GOLDEN, CIB, and C&R as ROSZKOWICZ's employers knew or should have known what that their employee was engaging in acts that only a licensed mortgage broker could perform.

37. ROSZKOWICZ intended to induce reliance on the part of the WILKES in entering into the loan agreement with Plaintiff's based on the false representation that ROSZKOWICZ was a licensed mortgage broker.

38. The WILKES did justifiably and reasonably rely on ROSZKOWICZ's representation that it was a licensed mortgage broker. Had the WILKES known that ROSZKOWICZ was not in fact so licensed, the WILKES would not have entered into said loan agreement with Plaintiffs.

39. As a result of ROSZKOWICZ's misrepresentation the WILKES's have incurred damages of sums paid under the loan to Plaintiffs', and fees and costs of defending themselves in this lawsuit in an amount in excess of $100,000.

40. The aforementioned conduct of ROSZKOWICZ, GOLDEN, CIB and C&R were oppressive, fraudulent, despicable and malicious. The aforementioned acts of ROSZKOWICZ,

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

GOLDEN, CIB and C&R were committed with the wanton and willful disregard of the rights of the WILKES in an effort to deceive the WILKES. Therefore, the WILKES are entitled to an award of exemplary and punitive damages according to proof.

THIRD CAUSE OF ACTION

(Fraudulent Inducement to Contract)

(Against C&R FINANCIAL, INC., GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, RAY ROSZKOWICZ, and ROES 1 to 50, inclusive.)

41. The WILKES reallege each and every allegation set forth in paragraphs 1 through 40 above, and incorporates them by reference as though fully set forth herein.

42. At all times mentioned herein, ROSZKOWICZ knew that he was not in fact a licensed mortgage broker. ROSZKOWICZ knowingly misrepresented, concealed, and failed to disclose this fact to the WILKES. Therefore, ROSZKOWICZ was not qualified to perform, as he did in this case, as a mortgage broker, offering the WILKES advice, and setting up short term loans. GOLDEN, CIB, and C&R as ROSZKOWICZ's employers knew or should have known what that their employee was engaging in acts that only a licensed mortgage broker could perform.

43. ROSZKOWICZ intended to induce reliance on the part of the WILKES in entering into the loan agreement with Plaintiff's based on the false representation that ROSZKOWICZ was a licensed mortgage broker.

44. The WILKES did justifiably and reasonably rely on ROSZKOWICZ's representation that it was a licensed mortgage broker. Had the WILKES known that ROSZKOWICZ was not in fact so licensed, the WILKES would not have entered into said loan agreement with Plaintiffs.

45. As a result of ROSZKOWICZ's misrepresentation the WILKES's have incurred damages of sums paid under the loan to Plaintiffs', and fees and costs of defending themselves in this lawsuit in an amount in excess of $100,000.

46. The aforementioned conduct of ROSZKOWICZ, GOLDEN, CIB and C&R were oppressive, fraudulent, despicable and malicious. The aforementioned acts of ROSZKOWICZ, GOLDEN, CIB and C&R were committed with the wanton and willful disregard of the rights of

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

the WILKES in an effort to deceive the WILKES. Therefore, the WILKES are entitled to an award of exemplary and punitive damages according to proof.

FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty)

(Against C&R FINANCIAL, INC., GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, RAY ROSZKOWICZ, and ROES 1 to 50, inclusive.)

47. The WILKES reallege each and every allegation set forth in paragraphs 1 through 46 above, and incorporates them by reference as though fully set forth herein.

48. On or about November 8, 2006, the WILKES entered into a loan agreement with Plaintiffs, with C&R, GOLDEN, CIB, and ROSZKOWICZ acting as the mortgage brokers. C&R, GOLDEN, CIB, and ROSZKOWICZ provided all loan documents and executed said documents with the LABERTEWs. Furthermore, C&R, GOLDEN, CIB, and ROSZKOWICZ explained in detail to the LABERTEWs all documents that were to be executed.

49. Prior to and throughout the transaction C&R, GOLDEN, CIB, and ROSZKOWICZ acted as the mortgage brokers. As the WILKES agent and broker, C&R, GOLDEN, CIB, and ROSZKOWICZ owed the WILKES a fiduciary duty to make the fullest disclosure of all material facts that might affect the WILKES decision to enter into the transaction. As the WILKES agent and broker, C&R, GOLDEN, CIB, and ROSZKOWICZ owed the WILKES a fiduciary duty to competently, accurately, and in conformance with industry standard, execute all loan documents within the transaction.

50. At all times mentioned herein, the WILKES were unaware that ROSZKOWICZ was not a licensed mortgage broker or that C&R, GOLDEN, CIB, and ROSZKOWICZ failed to properly execute the loan documents and transaction. In fact, the WILKES were not even provided copies of the loan documents until September 2007 – almost an entire year after the transaction took place and despite the WILKES constant requests to ROSZKOWICZ that he provide them.

51. GOLDEN, CIB, and C&R as ROSZKOWICZ's employers knew or should have known what that their employee was not a licensed mortgage broker and was in fact engaging in

acts that only a licensed mortgage broker could perform.

52. The WILKES did justifiably and reasonably rely on ROSZKOWICZ's representation that it was a licensed mortgage broker. Had the WILKES known that ROSZKOWICZ was not in fact so licensed, the WILKES would not have entered into said loan agreement with Plaintiffs.

53. As a result of ROSZKOWICZ, C&R, GOLDEN, and CIBs' breach of their fiduciary duty to make the fullest disclosure of all material facts that might affect the WILKES decision to enter into the transaction, the WILKES's have incurred damages of sums paid under the loan to Plaintiffs', and fees and costs of defending themselves in this lawsuit in an amount in excess of $100,000.

54. The aforementioned breach of fiduciary duty by ROSZKOWICZ, GOLDEN, CIB and C&R to the WILKES was oppressive, fraudulent, despicable and malicious. The aforementioned acts of ROSZKOWICZ, GOLDEN, CIB and C&R were committed with the wanton and willful disregard of the rights of the WILKES in an effort to deceive the WILKES. Therefore, the WILKES are entitled to an award of exemplary and punitive damages according to proof.

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

FIFTH CAUSE OF ACTION

(Implied Indemnity)

(Against C&R FINANCIAL, INC., GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, RAY ROSZKOWICZ, and ROES 1 to 50, inclusive.)

55. The WILKES reallege each and every allegation set forth in paragraphs 1 through 54 above, and incorporates them by reference as though fully set forth herein.

56. There was an implied contract between the WILKES and C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive.

57. In the event the WILKES are found in some manner legally liable to Plaintiff, or anyone else, as a result of the events and occurrences described in the Complaint, said liability is solely based upon a derivative, vicarious and/or imputed form of liability, not resulting from the WILKES's own conduct, but instead based upon an obligation imposed on them by law.

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

58. In the event the WILKES are found in any manner legally liable, such liability was proximately caused by the acts or omissions C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive and, therefore, the WILKES are entitled to recover from C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive, indemnity, whether total, partial, equitable, and/or implied.

59. Prior to the filing of this cross-complaint, the WILKES incurred certain COSTS in the evaluation and defense of this suit, which arose out of the an implied contract between the WILKES and C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive. The WILKES alleges that they are entitled to judgment over and against the C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive, and each of them, for all sums that the WILKES incurred in the aforementioned COSTS.

SIXTH CAUSE OF ACTION

(Equitable Indemnity)

(Against C&R FINANCIAL, INC., GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, RAY ROSZKOWICZ, and ROES 1 to 50, inclusive.)

60. The WILKES reallege each and every allegation set forth in paragraphs 1 through 59 above, and incorporates them by reference as though fully set forth herein.

61. In the event the WILKES are found in some manner legally liable to Plaintiff, or to anyone else, as a result of the events and occurrences described in the Complaint, then any injuries and/or damages to Plaintiff were solely and/or substantially caused by the negligence and/or carelessness of C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive. Further, in the event the WILKES are found in some manner legally liable to Plaintiffs, or to anyone else as a result of the events and occurrences described in the Complaint, the WILKES are entitled to contribution from C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive in an amount, which the WILKES pays to Plaintiff in excess of the WILKES's pro-rata share of the judgment.

62. Prior to the filing of this cross-complaint, the WILKES incurred certain COSTS in the evaluation and defense of this suit, which arose out of the an implied contract between the

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

WILKES and C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive. The WILKES alleges that they are entitled to judgment over and against C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive, and each of them, for all sums that the WILKES incurred in the aforementioned COSTS.

SEVENTH CAUSE OF ACTION

(Contribution)

(Against C&R FINANCIAL, INC., GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, RAY ROSZKOWICZ, and ROES 1 to 50, inclusive.)

63. The WILKES reallege each and every allegation set forth in paragraphs 1 through 62 above, and incorporates them by reference as though fully set forth herein.

64. Cross-Complainant was in no way negligent or responsible for the acts, injuries or damages alleged in Plaintiff's Complaint. However, if as a result of the matters alleged in said Complaint this Cross-Complainant is held liable for all or part of the claims asserted against it, C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive, and each of them to the extent of their fault as determined by the court, are obligated to reimburse, and will be liable to Cross-Complainant for all or any liability so assessed by way of contribution. Accordingly, Cross-Complainant asserts its right to such contribution.

EIGHTH CAUSE OF ACTION

(Negligence)

(Against C&R FINANCIAL, INC., GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, RAY ROSZKOWICZ, and ROES 1 to 50, inclusive.)

65. The WILKES reallege each and every allegation set forth in paragraphs 1 through 64 above, and incorporates them by reference as though fully set forth herein.

66. The WILKES are informed and believes, and thereon alleges, that C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive, and each of them, negligently, carelessly, and wrongfully failed to use reasonable care and/or conform to the applicable professional standard of care in preparing and executing the loan documents between the WILKES and the LABERTEWs.

67. The WILKES are informed and believes, and thereon alleges, that that C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, and each of them, negligently and carelessly failed to exercise reasonable care and diligence to avoid loss and to minimize and mitigate damages which could have been prevented by reasonable efforts on the part of C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, or by procedures which should have been made in the exercise of due care in executing the loan documents.

68. The WILKES are informed and believes, and thereon alleges, that the damages alleged by Plaintiff occurred because of the negligence of C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, and each of them.

69. As a direct and proximate result of the negligence of C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, and each of them, it is herein alleged that the WILKES, in defending itself against Plaintiff's claims, has incurred and continues to incur costs and expenses including, but not limited to, litigation costs, and attorneys' fees arising out of the negligence of C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, to properly execute the loan documents and transaction with Plaintiffs.

70. Prior to the filing of this cross-complaint, the WILKES incurred certain COSTS in the evaluation and defense of this suit, which arose out of the an implied contract between the WILKES and C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive. The WILKES alleges that they are entitled to judgment over and against the C&R, GOLDEN, CIB, ROSZKOWICZ, and ROES 1 to 50, inclusive, and each of them, for all sums that the WILKES incurred in the aforementioned COSTS.

NINTH CAUSE OF ACTION

(Declaratory Relief)

(Against LOWELL LABERTEW and SANDRA LABERTEW)

71. The WILKES reallege each and every allegation set forth in paragraphs 1 through 70 above, and incorporates them by reference as though fully set forth herein.

72. CROSS COMPLAINANT seeks declaratory relief in the instant action pursuant to the Courts affirmative authority bestowed by California Code of Civil Procedure §§1060-1062.5

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

and the Declaratory Judgment Act, 28 U.S.C. §§2201-2202.

73. A dispute has arisen and an actual controversy exists between PLAINTIFFS and the WILKES in relation to the rights and responsibilities of the WILKES and LABERTEWs pursuant to Truth-in-Lending Act, as more fully discussed below.

74. Prior to the filing of this action, and in accordance with the Truth-in-Lending Act, the WILKES agreed to accept Recession Amount on the LABERTEWs Loan, which is the original principal balance minus all fees paid at the closing), to the sum of $52,978.35 (the "Rescission Balance"). WILKES indicated to the LABERTEWs that WILKES would secure the reconveyance of the LABERTEW Deed of Trust and cancel the LABERTEW Note, in exchange for their payment of the Rescission Balance. However, to date, defendants have failed and/or refused to obtain a new loan in order to pay the Rescission Balance to the WILKES. As a result, the LABERTEWS have had and will continue to have the benefit of an interest-free loan from WILKES.

75. An actual controversy has arisen and now exists between WILKES and defendants, the LABERTEWS, concerning their respective rights, duties, and obligations with regard to the LABERTEW Loan, in that the WILKES has acknowledged defendants' statutory right to rescind the Loan pursuant to *15 U.S.C Section 1635*, if defendants will repay to the WILKES the Rescission Balance required. The WILKES allege on information and belief that the Court may condition the granting of rescission on the obligor's or consumer's tender to the creditor of the Rescission Balance. (Palmer v. Wilson, 502 F.2d 860, 862 (9th Cir.1974)). Accordingly, the WILKES contends that defendants are obligated to tender to the WILKES the Rescission Balance before they are obligated to record a reconveyance of the LABERTEW Deed of Trust and/or cancel the LABERTEW Note. Any other procedure would leave the WILKES unsecured and at the mercy of a bankruptcy filing by the LABERTEWs.

76. The WILKES seek an order permitting it to enforce the LABERTEW Note and Deed of Trust if the LABERTEWs fail to pay the Rescission Balance on or before a date set by the Court.

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

77. The WILKES desire a judicial determination of the rights, duties, and obligations of the parties hereto pursuant to the *Federal Truth in Lending Act (15 U.S.C. Section 1601, et seq.)* and *Regulation Z (12 C.F.R. Section 226.23)*. More specifically, the WILKES seeks a declaration from the Court that the WILKES is not required to reconvey the WILKES Deed of Trust until it has received the Rescission Balance, and that the WILKES may enforce the LABERTEW Note and Deed of Trust if the LABERTEWs do not pay the Rescission Balance by a date set by this Court. Without such a judicial determination, the WILKES has no expeditious or adequate remedy at law, and the WILKES is therefore entitled to judgment from this Court, declaring the rights, duties, and obligations of the parties hereto.

///

///

///

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

Geraci Law Firm, APC
2030 Main Street, Suite 1300
Irvine, California 92614
T: (949) 260-9156; F: (949) 260-9157

WHEREFORE, the WILKES prays for judgment against C&R FINANCIAL, INC., GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, RAY ROSZKOWICZ, and ROES 1 to 50, inclusive, and each of them as follows:

1. For damages in an amount in excess of $100,000;
2. For costs of suit herein incurred;
3. For reasonable attorneys fees;
4. For exemplary damages; and
5. For all further relief that the court deems necessary and just.

WHEREFORE, the WILKES prays for judgment against LOWELL LABERTEW and SANDRA LABERTEW, and each of them as follows:

1. A declaration by the Court that the WILKES are permitted to take the required refund under 15 U.S.C. 1635 as an offset; and
2. Plaintiffs immediately fully tender the remaining amount; and
3. For all further relief that the court deems necessary and just.

DATED: March 7, 2008

GERACI LAW FIRM, APC

Christina L. Geraci, Esq.
Anthony F. Geraci, Esq.
Attorneys for Cross-Complainant, RICK WILKES and BEVERLEE WILKES

EXHIBIT 1

Offer to Purchase Real Estate

BE IT KNOWN, the undersigned, KATRINA CLARK (Buyer), offers to purchase from LOWELL & SANDRA LABERTEW (Owner), real estate known as 4515 DIANE WAY City/Town of SAN DIEGO, County of SAN DIEGO, State of CALIFORNIA, said property more particularly described as:

The purchase price offered is $610,000

Earnest money herewith paid	$0.00
Further deposit upon signing sales agreement	$0.00
Balance at closing	$610,000
Total:	$610,000

This offer is conditional upon the following terms:

1. This offer is subject to Buyer obtaining a real estate mortgage for no less than $590,000 payable over 30 years with interest not to exceed 8% at customary terms with a firm commitment thereto 30 days from date hereof.

2. This offer is further subject to Buyer obtaining a satisfactory home inspection report and termite/pest report within 17 days from date hereof.

3. Owner shall pay broker N/A, a commission of $0.00 (0.00)% upon closing.

4. Said property is to be sold free and clear of all encumbrances, by good and marketable title, with full possession to said property available to Buyer at date of closing.

5. Owner shall include in the purchase price and transfer, free and clear of encumbrances, all fixtures on the property on the date of this offer. The terms of this offer, detailed in the standard purchase and sales agreement to be executed, will determine what items are included/excluded as fixtures.

6. The parties agree to execute a standard purchase and sales agreement according to the terms of this agreement within 30 days of acceptance of this offer.

7. The closing shall occur on or before SEPTEMBER 30, 2006, at the public recording office, unless such other time and place shall be agreed upon.

8. Other terms: NONE.

9. This offer shall remain open until 12 o'clock, P.m., , 20 and if not accepted by said time this offer shall be deemed rescinded and all deposits shall be refunded.

Signed this 1 day of SEPTEMBER, 2006.

Broker ______________________

Buyer *Katrina F Clark* Date *9-21-2006*

Buyer *[signature]* Date ______

Owner *Lowell A. Labenta* Date *9/21/06*

Owner *[signature]* Date *9/21/06*

EXHIBIT 2

[redacted]

From: R & B [realtincup@gmail.com]
Sent: Thursday, February 28, 2008 1:19 PM
To: [redacted]
Subject: Letter from Ray's Lawyer re: Labertew
Attachments: Response letter 2.doc

[redacted]

Attached is a letter Ray sent that his lawyer drafted for us to use. [redacted].

[redacted].

---------- Forwarded message ----------
From: **Beverlee** <Beverlee@bendbroadband.com>
Date: Sep 14, 2007 12:17 AM
Subject: Fw: Labertew
To: realtincup@gmail.com

----- Original Message -----
From: Ray Roszkowicz
To: Rick & Beverlee ; Rick & Bev Wilkes
Sent: Wednesday, September 12, 2007 2:47 PM
Subject: Labertew

Ray Roszkowicz
CIB Funding
951-245-6800 Ext110
951-757-2182 Cell
760-513-9068 Fax

RICK & BEV WILKES
869 WILLET LN
Redmond, Or 97756

Deborah L. Raymond
380 Stevens Avenue, Suite 205
Solano Beach, Ca 92075

Subject: Lowell & Sandra Labertew Loan Rescission.

Deborah,

In response to your letter dated August 18 2007 we disagree with your allegations & assertions. Your correspondence lacks reference to the specific issue. All documents required were provided and any specific issue(s) should be addressed and we will respond accordingly. Further more, all future correspondence needs to be sent to 1240 E. Ontario Ave Ste# 102-250 Corona, Ca 92881

Best regards,

Rick & Bev Wilkes

cc RR

541-316-1168

EXHIBIT 3

Anthony Geraci

From: Deborah L. Raymond [draymond@lawinfo.com]
Sent: Thursday, November 08, 2007 11:01 AM
To: Anthony Geraci
Subject: RE: Labertew, et al. v. Wilkes, et al.

Dear Mr. Geraci:

I have just seen your email. Based on your email below, as soon as I am able, which might not be until this evening, I will file a Notice of Withdraw of my Application for TRO.

Sincerely,

Deborah L. Raymond

-----Original Message-----
From: Anthony Geraci [mailto:anthony@geracilawfirm.com]
Sent: Wednesday, November 07, 2007 12:30 PM
To: draymond@lawinfo.com
Subject: Re: Labertew, et al. v. Wilkes, et al.

Ms. Raymond:

Please accept this email as a formal acknowledgement of your rescission and an acceptance thereof. We will commence calculations and provide you with a number that we think should be provided to us for repayment of the loan given to your clients.

In order to give us time to negotiate the rescission amount, my client has postponed the foreclosure sale until January 30, 2008, which should give us ample time to work out the details. You may also take this email as a guarantee to keep you informed of subsequent foreclosure dates so that you my reapply a TRO if it becomes necessary.

Furthermore, I have been authorized to accept service of your complaint when you have it drafted. Please forward to me at your earliest convenience.

Finally, please withdraw your TRO from the Southern District Court as soon as possible. Please notify me within the next 48 hours if you have done so. Otherwise, I will need to prepare an opposition to the TRO and move accordingly.

Should you have any questions at any time, please find below my contact information.

Thanks,

Anthony F. Geraci
Geraci Law Firm
2030 Main Street, Suite 1300
Irvine, California 92614
Tel: (949) 260-9156
Fax: (949) 260-9157
Cell: (714) 553-9515

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code, or (2) promoting, marketing or recommending to another party any matters addressed herein.

Tel: (949) 260-9156
Fax: (949) 260-9157

GERACI LAW FIRM, APC
2030 Main Street, Suite 1300
Irvine, California 92614

ANTHONY F. GERACI*

* ADMITTED IN CALIFORNIA, ARIZONA AND NEW JERSEY

SENDER'S EMAIL
anthony@geracilawfirm.com

FILE NUMBER:
3027.01

November 12, 2007

VIA ELECTRONIC MAIL AND
FIRST CLASS UNITED STATES MAIL

Ms. Deborah L. Raymond, Esq.
380 Stevens Avenue, Suite 205
Solana Beach, California 92075

RE: Labertew v. Wilkes, et al. – Rescission Calculation and Amount
Case No. 3:07-cv-02092-W-LSP, U.S. District Court for the Southern District of California

Dear Ms. Raymond:

This letter is to memorialize my electronic mail to you dated November 7, 2007. On that date, we accepted Mr. and Mrs. Labertew's rescission of the loan arranged by C&R Financial, Inc. ("C&R").

Also, please find attached to this letter the rescission amount that we expect your client to tender to us within the next forty-five (45) days.

Should you have any questions or dispute the rescission amount, please do not hesitate to call or email me at the above contact information.

Very Truly Yours,

Anthony F. Geraci

Rescission Breakdown

$45,015.91	**Amount of Trust Deed**
(2,167.86)	Loan Origination Fee
(250.85)	Prepaid Interest
(1,415.91)	Prepaid Payments
(867.14)	LO Fee to C&R Financial
(17.00)	Credit Report Fee to C&R Financial
(695.00)	Processing Fee
(500.00)	Doc Fee
(365.00)	Title Fee
(100.00)	Notary Fee
(10.00)	Wire Fee
(75.00)	Recording Fee
(75.00)	Courier Fee
$38,477.15	**TOTAL**
14,501.20	Reinstate 1st TD, July 2007
$52,978.35	**TOTAL PAYOFF**